

**MINUTES OF THE SPECIAL MEETING OF THE  
WASHINGTON STATE TRANSPORTATION COMMISSION  
February 14, 2005**

The special meeting of the Washington State Transportation Commission was called to order at 5:30 p.m., on February 14, 2005, at the Red Lion Hotel, 221 N. Lincoln Street, Port Angeles WA.

Commissioners present were: Vice Chair Dan O'Neal, Ed Barnes, Elmira Forner, A. Michèle Maher.

Vice Chair O'Neal

Opened the meeting by introducing Commissioners Ed Barnes, Vancouver, Elmira Forner, Chelan and Michele Maher, Spokane.

Vice Chair O'Neal

For those of you who don't know, the Washington State Transportation Commission is responsible for policy at the Department, and we are also responsible for hiring the Secretary of Transportation. We don't normally get into the day-to-day operations of the Department, but we do have some oversight responsibility. Let me also mention that we have in the audience today a number of people that I should recognize; Mayor Headrick, Chief of Police, Thomas Riepe, Clarence Morakie, Congressman Ensley's office, Port Angeles Council members, Karen Rogers, Grant Munro, Larry Williams and City Manager, Mike Quinn, Port Commissioner Leonard Beal, Mary Schumann, Congressman Dicks' office, John Brewer, Publisher, Peninsula Dailey News. Members of the tribe are here as well, Chair, Francis Charles and Vice Chair, Dennis Sullivan.

Vice Chair O'Neal

We will start by trying to share with you the facts as we understand them. To start, I will introduce Secretary, Doug MacDonald, WSDOT.

Secretary MacDonald

I am Doug MacDonald and I've been here before, three weeks ago meeting with the Chamber of Commerce and the union. We've been at a variety of other places to talk about this issue with people to try and get their questions answered about what has happened here over the last year and a half. Governor Gregoire asked if a meeting like this would be useful. The Commission thought that it would be good idea. This is the first meeting that I've been to in Port Angeles where all elements of the community are present. There is some question as to whether or not there is going to be an investigation or a report. The Department will write a narrative answering many of the questions about how we got here. One of the things that will be helpful about tonight's meeting is that the Department will be able to hit some of the questions that will need to be emphasized in a report to the Governor and Legislature.

The Department came to Port Angeles in late 2002/early 2003 with the need for rehabilitation work on the Hood Canal Bridge.

The most important part of the program is to get the bridge rehabilitated because of its importance as a transportation economic lifeline for the entire north part of the Olympic Peninsula. This is still the most important objective in what has been done and what will continue to be done. At the time the Department was looking for a place to build anchors for the new pontoons that would be built. After talking with Port Commissioners in Port Angeles, the Port Commissioners suggested the site as a place that might be suitable, not only for doing construction of the anchors, but also for the pontoons. A large site was required because of the need to float the pontoons out and move them to the bridge for as quick of an operation as possible. In the early summer of 2003 there was an archeological investigation done at the site, there was also a lot of other issues about permitting the site. It looked as though the site was suitable based on all of that. The site was acquired from the Port of Port Angeles, and construction began in August of 2003. Prior to that there had been letter writing back and forth to the tribe, as well as the Department's own investigations. The tribe informed the Department that there might be a possibility that archeological or cultural material might be found in the vicinity of the site. The tribe cautioned that there should be a monitoring program with the construction, so that if anything were found it would be noted. The tribe did not tell the Department to expect to find a significant village or a large number of burials. The archeological investigation that was conducted did not show this. One of the reasons for that is because of the extent of change to the waterfront area, because of prior construction of a mill and other things that had happened to the site over the years. The Department was hindered by the current nature of the site in expecting to find what ultimately emerged. It was only a few days into construction, after a concrete slab had been demolished; a DOT inspector found what was possibly a human bone. This triggered the contracts monitoring provisions with the contractor. Work was immediately stopped, and the situation was immediately looked after. It became evident quickly that there was likely to be a lot of bone fragments and other fragments owing to historic disruption of the site. There has been disturbance by fill that had been brought in at the time of the construction of the mill, the mills operation, or other fill along the waterfront. The Department would have to deal with the possibility of recovering a fair amount of material. The tribes concern was about the gathering of that material and the reburial of material that had been historically disrupted. Between August 2003 and March 2004 another archeological assessment was done at the site as a result of the initial discovery, and a fairly comprehensive program for performing archeology on the site alongside construction was put in place, so that the Department's obligation of the National Historic Preservation Act could be met. As this project is partly funded by federal money, the Department is subject to its requirements. In March 2004 a fairly extensive agreement was signed regarding how the site would be treated. At that time the expectation was, in the course of 2004, the archeological review would be completed and material would be recovered. No one at that time expected that it would include a significant collection of human remains. It was expected that the find would be a fishing culture or whatever archeologists find. No one thought that we would be in the middle of a major burial ground. Those of you that have been on the site or worked on the site know that it was quite extraordinary. It did not take very long for it to become clear that this had been a burial site along the line of the old beach – which was quite a ways back from the water today, and quite a distance under the current land surface.

Early on there were thirty or forty bodies uncovered that had been buried in a hurry in a non-traditional way that were apparently deaths as a result of the smallpox epidemic here introduced by Spanish explorers, probably in the year 1786. The tribe is very interested in the ancient age of the site in the fact that it represents occupation that may go back two thousand years. This is a part of all of our history. This is significant to the tribe because it's their ancestors involved. These are the graves of the ancestors of the community, and moreover, the spiritual tradition of the tribe that binds them to the community of where their ancestors are buried in a way which creates more of a community of one, than we are created with in our now native traditions. The question of how this destruction, of the community of ancestors, was going to sit with the tribe became a larger problem over the course of the summer.

Moving forward, there was a contract that included litigation payments to the tribe and governed how the work would be done over the course of the summer. It is fair to say that no one had the foggiest contemplation that there would be removed from the site the amount of bodies that were found. Over the course of the summer we were struggling with the question of how to continue the project. For those of you who are familiar with the jobsite - that we could somehow remove from the lower graving dock area anything that was there - because we were going to do it anyway. The way the beach line cut under the upper graving dock area suggested that we were going to have to do a massive further investigation if all the burials were to be removed. Late in the fall the tribe told the Department that as far as it was concerned that we could not go forward without some kind of commitment to remove the entire buried community. To us that suggested that we had no control over the schedule and cost of going forward with the project. We talked with the tribe in early November/December about whether any kind of agreement could be reached to carry on. Ultimately the tribe told us that they could not make a proposal to us that they thought could be satisfactorily achieved. People have asked me tonight "you had a contract, why didn't you just go forward" why didn't you insist that the contract with the tribe be enforced, and the job be finished whether there were burials in the ground. There are two or three different reasons for that: first we had a responsibility to the taxpayers of the state to have some sense of how this project could be kept on some kind of schedule and within some kind of budget. The notion of going ahead and removing burial after burial, which might have been one way to read the contract, was going to put the project in a place where we could not guarantee its delivery. The second issue was an issue of law. There had not been an Environmental Impact Statement (EIS) prepared on this project, because it had been seemingly simple to permit in the onset. The National Environment Protection Act says that if something comes up in the course of a project in which that act protects, it can be a natural or cultural resource. Even though you do not start an EIS at the beginning of a project, you may have to stop mid way through and do one. The tribe's lawyers knew that, we knew that, and the most interesting feature of that law is that any citizen in the United States can seek to enforce it. A suit would have stopped the project for two or three years at a cost of time, delay and money that would have been huge. That possibility was one of the factors that made us decide that it was time to turn our attention elsewhere and get on with the bridge.

The third thing was that this project that started as a successful local ground breaking in 2003 had become by the end of 2004 a regional, statewide, national and potentially an international question of what was going to be the relationship of this project to those bodies, spirits, those souls that were in the ground. We judged that as public attention around the country gained ground that 60 Minutes was going to show up. We judge that the difficulty of completing the project, in that environment, the problems that it was going to create for this community, and how this community was viewed around the state and country, were simply so large from the standpoint of the Department's ability to do the project, that we should understand the meaning of all that and decide to do the project in another way. That led to the announcement that I made, after consulting with a lot of different people, in December about the risks that we thought we would avoid by stopping the project. This turned us to a second phase of the enterprise. What are we going to do now about the graving yard, about the pontoons and the anchors if it's accepted that the pontoons are not going to be built at the graving yard. That's very important to this community, because the condition of the bridge is a real issue for people's access to hospitals, businesses, tourist economy and other things depend upon the bridge – we must fix the bridge. What we are doing at WSDOT on a highly expedited basis is examining how to move forward. There is an expert review panel that has come and looked at the project to help advise us on how to deal with the contractor. We are looking at a number of sites that have been narrowed to three or four remaining as front-runners for locations for the pontoons. The Department is going to do everything it can to keep as much of the work in Port Angeles as possible. This has been a very important part of our commitment to the union in particular. The Department has asked Kewitt to hire an engineering consultant, on a change order basis, to look at the engineering of whether it is possible to do the anchor work in Port Angeles. It may not be at the actual graving dock site itself. There are some possibilities for the anchor work to be done in Port Angeles. I say this with some caution, because I do not want to create the expectation that this is about to be announced.

The third chapter in the story is that Port Angeles was doing fine looking at an economic development program with a number of opportunities on our waterfront until WSDOT came along. Now that the Department has decided to leave there is a mess left, because there will be no economic development in Port Angeles. The entire Port Angeles waterfront in Jim Bucks words is now "archeo-active". This is a huge concern to the community, which we appreciate. We also realize that our answer to that is not one that gives much comfort, because our answer is that you folks can build from this experience and work some of it out. Not exactly what people were hoping we might do when we came here in August 2003 with the very important project that catalyst economic development here. We have a variety of answers to that – we have spent enough time with people here to realize how strongly people feel about the issue. We have come to understand some of the tribes perspectives on the issue, that have to do with an understanding amongst the community, including the tribe, about where history has taken us, and what has to be done to understand, recover and move forward. The tribe is a part of this community with a pretty strong economic interest in how this community prospers and develops. The tribe will help work all of these issues forward, but the tribe certainly has a huge interest in them.

This has been a blow to the community, but you would be surprised how much forward-looking strength that there is in the community about its future. It is my feeling that having this issue in front of people may help lead to resolutions that may be achieved that would need to happen sooner or later anyway.

The Department has its good days and bad days on this project - I try not to let my sinicism overcome me. It really wasn't the best deal the Department ever got when we met the folks from up here who sold us the piece of ground for \$4.5 million dollars, which nobody knew had between 300-600 bodies buried on it. Sooner or later the communities implications of this need to be worked out, and I think now is the opportunity. What has struck me is the diversity of opinion on this whole discussion. We have had people in the tribe who wanted the project continued, who were working on the job or whose view was that the best of all things was to continue the project. We have had people in the non-native community who have approached us and said "you should have stopped a long time ago". People have said that we have wounded Port Angeles by giving in. As we listen here tonight I hope that we will be able to address some of these things in our report.

#### Vice Chair O'Neal

The Commission does not ordinarily hold this type of session. Because of the community interest and the Commission's involvement in this decision we should be here. The Commission's focus is getting the bridge built. The Commission has gone through all of this with Secretary MacDonald. We have developed some understanding of the facts, but more importantly the uncertainty about the facts.

#### Commissioner Maher

I have talked to a number of you this evening. It has been quite enlightening. I'm looking forward to seeing this becoming a win-win situation. I think you have the ability in this community to develop a vision that is going to benefit all of the communities within the area. I'm looking forward to hearing from all of you.

#### Commissioner Forner

Some of this sounds familiar. When we finally get the funding for a project, which takes a long time and a lot of planning, we have to give the legislature a number of dollars that it's going to cost and the time that it's going to take. There is always a risk. This is not the first project that has been stopped, either by environmentalists, or by geology or by archeology or some other thing. Our responsibility as a Commission is to be the direct link for the general public for transportation issues, and that's why we are here tonight – to listen to what the public says. I hope this can be a learning experience and a win-win situation for not only Port Angeles, but how we deal with projects in the future.

#### Commissioner Barnes

I am from Clark County and one of the seven Commissioners that represents the State of Washington. There are times that the Commission has to listen to all sides of the issue. When I first became a member of the Commission I used to jump rather than listen to what was said first – you stick your foot in your mouth a lot of times, so I would let you know that I do not plan on sticking my foot in my mouth tonight.

We are here to listen to what you have to say, and everything is going to be record, so please speak up, so that the Commissioners can review it. We want to make sure that we get this right.

Francis Charles, Chair Lower Elwha Klallam Tribe

Thanked the Commission for coming today. First I need to start this protocol the way that I have been raised. I want to thank our elders, tribal council, Dennis Sullivan, Phil Charles and Rosie Sampson, and our workers that are here. I would like to thank our community members that are here.

This is a village site where you are sitting tonight. This is in our hearts and prayers, with what we are dealing with. I would like to thank the other tribes that are here tonight, some of which are from Canada, to support us. Let me express some of the emotions. When we started working on the project, when we got the phone call, and as we proceeded forward with what has taken place with the burials. We have some of our youth that were out there on the ground. As we were going through the process we were going through some of the old information at the courthouse. When we started hitting the burials they began using their own hands to scrape away the dirt. I give up my hands to the workers. It is something that we will never forget. Some of our elders could not make it here tonight because it brings back a lot of heartache and hurt. Our ancestors were used as backfill, pushed aside by the equipment in those times, under or along the pipeline. They were mixed in with concrete, metal, PVC and wood that was used as backfill for our ancestors.

Our ancestors were used as if they were nothing and discarded as if they were trash. How do we explain to our youth what transpired at the site in the 1900's? I still do not understand why they could have been used as a backfill in those days. Seeing the news articles from the 1900's of the Port Angeles Dailey News of some of our ancestors remains being exposed in the newspapers at that time, and talking about the squatters that were being burned out of their homes, talking about those that had to be ran off of Ediz Hook because they needed it for economics and other purposes. We are fighting for our youth of the future that will be fighting for our rights for what has occurred here. We are here to work with you, we're not here to work against you, we're here to be unified, we want to see things happen too. We had 108 tribal members that were laid off from the site closure. No different than anybody else. They did not look forward to the loss of their paycheck two weeks before Christmas, and it still hurts me. Our Council has to be faced with families that need resources too. I have boxes of paperwork from this negotiation process, I have the data, I have compromise with what we started working with the agencies. Our tribe looks at how this will impact our future. We look into the future to economics happening here, but I can tell you it's not going to happen on that site, because we have so many burials there. We are talking eight hundred burials that are fully intact, thousands of bits and pieces that were scattered across the site that has been compiled into a cedar box. There are 315 cedar boxes that are stored in a tribal building that has more than eleven individuals in each box. We were in a funeral everyday we worked on the site. All of us sought out our spiritual advisor Johnson Charles for strength. It's not just the emotions – our tribal members earned money on the site too. We asked our tribal elders to consider what should be done.

When they called us they said “enough is enough”. There are so many more burials on the site. Spiritually wise we are very concerned – the burials that have been removed need to be reburied. They need to be put back to what they thought was their final resting place.

They want to put back to where they were. This is a task that we are asking for all of you to help us with, as well as our community. It’s a task of where we have a ceremony that we have to deal with in our community to make sure that things do not happen within ourselves and within our families. I pray to the creator to give me the guidance and wisdom to what I need to know what I have to do tomorrow. We will endure this task and complete it. Dennis Sullivan stated that “this is not something that we created, it’s something that we inherited”. We need all of you to help us – we are all adults, and we need to talk about this. We can agree to disagree, but let’s work through the problems. That’s all we are asking from the community. Some of the burials are as old as two thousand years ago. Klallam people are strong people and we continue to be proud for who we are. We can share this find to continue to educate our people and everybody. The tribe is a big economic player in the town of Port Angeles and the county.

Vice Chair O’Neal

Just to clear up a rumor. There is no federal mediator involved in the situation. Is that correct

Secretary MacDonald

“yes”

### **Public Comment**

Walter Jackson, Executive Director, Quileute Tribe

Pointed out that there have been some interesting things that have gone on. This has been a tough road for all of us. The tribes work with communities, the county and the state regarding economic development and tourism. Culture is serious for tribes. We are all brought up spiritually. It is important to us. I want to point out that tribes are very interested in working with everyone. We have to work things out in order to move forward.

Mayor Headricks, City of Port Angeles

Thanked Francis Charles for attending and sharing the feelings and emotions of the tribe. Francis asked how I would feel if it were my ancestors that were being removed from their resting place. “I think very much the way that she feels”. The only difference is that I would not be involved in removing them. It was the choice of the tribe to remove the ancestors, and I appreciate that because it created opportunities for members of the tribe to earn money and also learn a skill. Archeology is probably going to become much important and predominate in this state as we move along. Throughout the United States, for the benefit of the community, cemeteries have been moved. It’s a matter of doing it with respect, recognizing the rights of the individuals of the ancestors, and moving on.

Essentially that's the position of the city and myself, that is we want to see the archeology finished, that the burials be reinturned, and the neighboring property, which was a part of the original contract that they would be buried on the adjacent property to the graving yard. It is not unreasonable to assume that there may be less burials than what is expected. My suggestion is that we have the EIS, that we determine how to deal with this site, that archeology doesn't destroy or take away from one's history, it actually adds to it. Without digging up the remains and the artifacts you do not know what is there.

As has been indicated nobody really knew what was there. I had heard at one time that the gravesites were on the other side of Marine Drive. I understand that at some point the elders believed that there was a large graveyard and village along the waterfront. There was an 1853 government map that showed that there was a village on that site. Going into this project there was awareness that there was a village and a strong possibility that there were graves there. There was a lot of effort taken to work out a plan to do the archeology, there was payment of \$3.4 million to take care of attorney fees, cost of purchasing property and reinturnment and a curation center, everything seemed to be in place. The appropriate way of doing this is to move on, finish the project, display the artifacts, reinturn the burials, and then the community moves on. I have a question on page three of the expert review panels report under the area of observations: On the basis of observations WSDOT's decision to suspend work at the Port Angeles site for the projects Graving dock is the right thing to do from a contracting and public policy standpoint. Would somebody on the panel here explain to me what a public policy standpoint means.

Vice Chair O'Neal

I thought that Secretary MacDonald made that very clear. We are trying to build a bridge. The problem that developed was that there was great uncertainty as to just what the costs of going forward were going to be, and how long it was going to take to resolve all of the issues. Those facts made it very difficult and we felt it impossible to go forward.

Armando Gonzales, community member

Stated that there were quotes in the paper that the majority of the people wanted the job stopped, and the majority of the jobs were going to the tribe. I think those were misquotes. I think that if anything comes out of this I would like an assurance. I feel that as a member of the community we were left high and dry. WSDOT should keep the job on the peninsula. They have spent close to \$60 million already, and I'm sure they can spend a little bit more and keep the job on the peninsula.

Larry Leonard, community member

Commented that he has a real concern that an organization such as this can run a project as big as this when they can't even get food service workers on our ferry boats. My first question is: why is it that WSDOT and the Governor are so against having an outside agency audit this and tell us what went wrong. It seems to me if your agency makes the report – it's sort of like the fox guarding the chicken house. I as a taxpayer want it from an outside agency.



Vice Chair O'Neal

Responded that there is not a problem with somebody auditing this, and as far as taxpayers go - all of us in this state are taxpayers. That's what went into this decision – is how to spend public money.

Larry Leonard

The second question is: the archeologists that did the tests on this, it seems that they should have gone on to other areas. Why were the graves not found?

The third question is: you say it could have taken years for an EIS to be done, if that was required, how long is it going to take to get a new site up and running. I cannot believe you would do it without an EIS this time.

Vice Chair O'Neal

Responded that it is his understanding that the archeologist was carefully selected. Went to the site, dug seventeen holes and apparently missed the remains.

Secretary MacDonald

Responded that the archeology testing would be covered in the Department's report, and probably in the audit as well. For people in Port Angeles to contemplate this question – how can you ask this question without asking the same question – how is that since this situation on the beach has existed for less than a hundred years – that the Port of Port Angeles Commission did not know that there were between 300 and 600 bodies on the site when they sold the property to WSDOT. The problem is – what's there is there – and who knows what's in some of the other areas that are important for future economic development. Who knows how the tribe and the community are going to work out these issues. It has to be worked out for the future of Port Angeles. When all of this is said and done the question of the archeologist will be less important than how everyone recovers from what has happened on the site, and where it leads the community today. It is not the answer to what happens next. If the Department does decide to build the anchors in Port Angeles – that involves finding a location. The Department is doing everything it can to hold to the current schedule and achieve the 2008 float-in.

Jim Maynard, community member

Expressed his concern for the tribe and officials that represent this situation. When you affiliate religion with economics there is a stumbling block. The problem with the situation is that each group has its own perspective, and when a religious base is added it's going to be very difficult to solve this problem. He shared that as a young man he was aware that there were bones on the site. It has been expressed in the community that a lot of people knew that there were bones.

Francis Charles

Responded that the reason that the tribe is where it is at today is because it was not until 1990 when Indian burial protection acts came into effect, after 1992. There were not laws that protected our ancestors and the burials that we are faced with today until the 1990's.

Loraine Ross, community member

Commented that someone else created this issue at the site. She expressed that we are victims of circumstance at this point. She asked if the state were able to move forward on the site is there more excavation needed to continue the project.

Vice Chair O'Neal

Responded that the answer is "yes".

Loraine Ross

Questioned whether the tribe's interest is in preserving the artifacts, and having a museum on the site or someplace else, or do they want the entire site exhumed.

Francis Charles

Responded that the tribe had asked for the project to stop, because enough is enough. With the burials that we have we want to see that they are reburied. That's our position and that's where we stand. We would like to see our ancestors put right back where they came from, what they thought was their final resting place.

Allison Golden

Resident of Port Townsend shared that she relies on the bridge to commute to her job at Harborview. Everyone the Olympic Peninsula in one way or another is dependent on the bridge. She expressed that her concern is for the safety and dependability of the bridge. Will the bridge be safe until 2008? We need to get over it, move on and get the bridge built for the residents of the Olympic Peninsula.

Vice Chair O'Neal

Commented that the bridge is an important transportation link, and its condition is one of things driving the Department's decisions.

Secretary MacDonald

The Department has the exact situation with this bridge that it has with the Alaskan Way Viaduct. It's vulnerable, and potentially the worst vulnerability to the bridge is storm damage. The Department is moving as fast as it can to get maintenance work done on the bridge. The bridge is safe to drive on today. The bridge will be closed if there are circumstances that would indicate otherwise. The Department needs to press ahead with the project.

Holly Hilts, community member

Questioned why WSDOT did not respond to the Elwha's monthly letters that were sent to them. A tribal elder told her that letters were written monthly.

Secretary MacDonald

There are monthly reports that were supposed to be given to the Army Corps of Engineers that the Department fell two or three months behind on because we were trying to get the excavation done. That was not an issue with the tribe, and there has not been a communication breakdown with the tribe about what has been happening on the site.

Holly Hilts

There was reported to be a pit of skulls at the site. The Gray Repatriation Act states that remains will be returned to the tribe of origin. Will you perform DNA testing required to determine the origin, so that those remains can be returned to their rightful tribes.

Secretary MacDonald

Responded that the repatriation of remains is in the hands of the state historic preservation officer, who administers the National Historic Preservation Act.

Holly Hilts

What will happen with remains if they are not Elwha?

Secretary MacDonald

It is not clear yet as to what would happen with remains if they turn out to be other than Elwha.

Holly Hilts

Is the last archeologists bill \$8.4 million dollars?

Secretary MacDonald

We can get the exact number for you.

Holly Hilts

When do I get to see the archeology report that was paid for with my taxes?

Secretary MacDonald

As soon as the archeology report is written.

Holly Hilts

Has the \$3.4 million dollar mitigation fund been paid?

Secretary MacDonald

The \$3.4 million mitigation fund has been paid.

Holly Hilts

What legal right and authority do you have to walk away from a signed agreement when the funds come from the taxpayers?

Secretary MacDonald

There are two answers to that. One is whether or not the agreement binds when the circumstances under which the agreement was made are so changed. The second answer is that there had to be a decision made on how to use taxpayer money if there would be no yield no return, because the project would not be finished, even if we spent more money on it. The Department had the duty to stop spending taxpayer money even though their money had been spent up until that time.

Holly Hilts

How is it that WSDOT has stated that \$58.8 million dollars has been spent. Since that figure additional dollars have been spent. What is the actual figure when the site is closed down, withstanding legal actions, and does that include any recovery figures?

Secretary MacDonald

Recovery of what kind?

Holly Hilts

The remains and artifacts.

Secretary MacDonald

The estimate that we have given the public is \$60 million dollars, as the cost of the investment at the site. That includes a plug number, which is very evident, in the statement for the final cost of closing the site.

Holly Hilts

Have you made an estimate of the figured costs that WSDOT is assuming to lose from the inevitable lawsuits from contractors, subcontractors and the like?

Secretary MacDonald

No. I'm aware there are a bunch of subcontractors, suppliers and employees who may have claims against the site and the job. We will work all of that out through our contractor, through a clear change order, that will deal with this site and whatever the contractor has to go on to do elsewhere on the job.

Holly Hilts

Has the State Legislature been informed of potential lawsuit costs, and been able to budget for things.

Secretary MacDonald

Frankly, I don't think there is going to be a lot of lawsuits occurring out of this job to tell you the truth. I think that Keiwitt has kept its material men, suppliers and employees up on the job. I think that there will be some small claims against the job, and we will handle those in ordinary course.

Holly Hilts

Because of the contract signed by WSDOT resulting in commitments made by project personnel to relocate to this area at their own personal expense, what obligation does WSDOT have to reimburse them for their financial loss commitments.

Secretary MacDonald

With respect to WSDOT people or contractor people.

Holly Hilts

I'm talking about everybody, the state workers, that moved and bought homes here, the Keiwick guys that moved and bought homes here, the people from here that have worked and fought to live here that now have to leave their homes, such as my own family. What is your obligation to those people?

Secretary MacDonald

That's a complicated question. I'm sorry that that's the way it is, but the Keiwick people will deal with its people. In your own situation – we cannot get into a family-by-family discussion of looking at what economic prospects are as a result of this, and other things that are going on in Port Angeles. I happen to know that there is going to be a major construction project on the dam. I expect there will be a whole lot of people are going to be working on that project, and other people may be doing something else. I appreciate your question, but I do not believe that there is an answer that can be given on an individual basis.

Holly Hilts

So, you will be looking more towards a class action lawsuit by ignoring the rules of contractual commitment, do you not feel that the community of Port Angeles deserves special consideration for working or fighting to keep the site here.

Secretary MacDonald

I do not believe we have ignored rules of contractual consideration, and I also think that the note that was read earlier about the decision being a correct one under the contract for public policy largely answers your question. I have said on every occasion that we are going to try to do everything that we can, so that the work if possible can be on the Olympic Peninsula. We are now involved in discussions whether or not the anchor work can be done here in Port Angeles, this speaks, I think, to our commitment to try to make good to working people here in Port Angeles who stand to gain and lose from the project circumstances.

Sean, community member

I worked at the site as an archeological assistant. I noticed a lot of cooperation between people on the site. Why can't we all do that here?

Dan, community member

The answer to that question is because it's seeming like it's one sided. I understand spiritual beliefs, but what I'm trying to get across is that you're not the only people having to deal with this situation. Our families don't have jobs now. Where does it come into play where all you're going to look at is your community and your feelings. We are a big part of this community also.

Frank, community member

Are Commissioners full-time and salaried, or is this in addition to your day job? How often do you meet, and are the meetings open to the public.

Vice Chair O'Neal

The Commission is a citizen group. We meet for two days a month and also have community meetings four times a year. The meetings are public, the regular monthly meetings are held in Olympia and other meetings are held everywhere in the state.

Frank

When did you first become aware that there was a problem with the Port Angeles site?

Vice Chair O'Neal

The Commission has known that there was a problem for a year or so, but last August, I think was when we first heard that there was a potential of having to take some dramatic action.

Frank

Was there discussion of an alternative site at that point – plan B.

Vice Chair O'Neal

No. There was not an alternative site in mind. We knew that going forward in Port Angeles could be extremely time consuming and very expensive, We had to think about the taxpayers. The Department has since sought potential sites. And there are several in the state that say they are ready to go.

Frank

You mentioned, Mr. MacDonald, that you paid \$4.5 million for the Port Angeles site – is that correct? How many acres is it? What is an estimate of the value of the land today?

Secretary MacDonald

Twenty two acres.

Frank

Is the \$4.5 million included in the \$60 million dollar estimate as to the money lost.

Secretary MacDonald

Yes. I don't know what the site is worth today. That of course is a big problem, and one of the reasons why we're all here.

Frank

Is the Rayonier site being considered?

Secretary MacDonald

The Rayonier site was considered in the initial consideration in 2002/03, but was ruled out because of a concern for the hazardous materials on the site. It has been mentioned in consideration of the current circumstances. The judgment is that it is not a suitable site for the same reasons as before.

Frank

For ecological reasons only?

Secretary MacDonald

For reasons of cleanup and other legal considerations around the site.

Leni Sampson, community member

This has been happening for over 150 years. Burial grounds have been disturbed. Indians were kicked off their villages and moved to places that nobody would want to live. This town cannot cover up what it does anymore. It's happened a lot, and nobody has ever stood up for us, and finally we're standing up for ourselves. It's really hard and I'm just glad that it was a government project that required archeological monitoring, that required reports to be done, that required somebody to stand there and say "this is not right". It has finally stopped and now everybody is so mad about it. I'm just here to say that somebody needed to stop it – and oh well!

Citizen

I think that there should be a museum on the site where the burial is. I believe that the state should have required test holes before the operation began. I think that the federal government can afford to put in a museum there and the whole community will benefit by it.

Arlene Wheeler

I'm the cultural resource liaison for the Lower Elwha Tribe. I have worked on the site for the past seventeen months, and it hasn't been easy. I want all of you to know that it hasn't been easy for my people. There is history there. History of our tribe is all along these waterways. I want to set something straight that someone has been saying – one gentleman has been saying "you people choose to dig up your ancestors". With respect to my elders that are here – that's the way of our culture. We don't let anybody else dig up our ancestors, if anybody's going to do it we're going to do it with the most respect. That's why we don't let the archeologists do it – we do it ourselves. I want the mayor of Port Angeles to know – because I've heard him say it three times – "you choose to dig up your ancestors". That's our culture. There is a lot of anger in this room – we're here and we want to work with the city of Port Angeles, because we're not going anywhere and neither are you, so let's work together.

Richard Stevens, community member

We now have one of the most significant archeological finds in North America right here in Port Angeles. We should be thrilled. The value of the land at the site is priceless.

Citizen

The tribe has a tremendous amount of support in the community. The graving yard is a very special place and having the remains repatriated is the thing to do. Community concerns are what the protocols are that address other areas around the community.

Vice Chair O'Neal

Expressed that the Commission's position is not to mediate the situation.

Citizen

Would tribal elders and the Department consider discussing the situation, so that the site can still be considered for the graving dock. This would benefit the taxpayers. The bridge could be dedicated to your ancestors.

Secretary MacDonald

The Department and tribes relationship is governed by government-to-government consultation between our state and the tribe as a sovereign nation, whose rights under the law are treaty obligations entered into by the United States in 1855. The Department respects, in the government-to-government process, the position of the tribe that has officially been conveyed to our state. The Department is not expecting to reopen discussions with the tribe. The Department would like to find a way to build the anchors in Port Angeles that does not intrude on the tribe's position.

I don't see how I can be anymore direct than that, but that's our position at the Department under the government-to-government process.

Dan Baskins, community member

I represent one of the subcontractors involved in the project. I have to admit that Keiwitt General is one of the most honorable contractors that we have worked with. I hope that our claims that are expected, and brought forward, will be handled in a way that we are used to in working with such an honorable group. One of the things that diminishes our ability to make a proper claim is whether or not the forensic issues of how the mistake was made, or if it was a mistake, needs to be illuminated a bit stronger. Also, there is an issue on the exit strategy. This is important and needs to be established clearly. The economic issues that effect the contractor, subcontractors and employees needs to be addressed in both direct and indirect impact that has occurred by the sudden stop of work. This issue will not go away when WSDOT goes away. There needs to be resolution to deal with all of the issues. The problem that I have tonight, and this is an issue that has been brought forward by our attorneys, because NEPA was not chosen as a proper tool to create illumination of this issue, there is no set way of public policy to review and work through the accuracy or assertions that were made to make the original forensic decision of stopping the site, and the ultimate exit strategy of how you leave the site and where you ultimately go. We believe that NEPA is the proper venue to address these issues so that the community as a whole can understand and comment about the issues that go forward. I would encourage the NEPA, third party review or federal mediator to address these issues.

Dennis Sullivan

I am the vice chairman of the Lower Elwha Klallam Tribe. I want to thank the Commissioners for being here. There has been seventeen months of frustration. During negotiations with WSDOT there have been heated moments that remained very professional so that the project could go on at the site. What we agreed upon was based on the early findings of only twenty-five burials. During our negotiations I repeatedly stated – we don't know where we are at – we don't know if we are at the beginning of a cemetery – in the middle of a cemetery – or at the end of a cemetery. You all know what the results were.



Where we are at now is that the tribe has repeatedly read letters to the editor and statements made by business associations and taxpayers. Tribes have been labeled as non-tax paying people. The tribes tax contribution in 1997 was \$1 million something just through payroll. In 2003 it was \$3 million something, and in 2004 there was a \$4.8 million contribution to payroll - that doesn't count all of the contractors that we hire to come to the tribal center and work on the building. We deal locally unless the dollars amount is too high do we go outside of our own community. We are part of the community. When settlers came my ancestors were here to welcome them. Envision three hundred fifty caskets sitting with no place to rebury them. This is what our tribal members are going through. Just as our community relies on the mayor, our council relies on our community. They are the ones that give us direction. The end result has been easy on any of us – we are all community members – we rely on that bridge to get across to Seattle. We have had meeting after meeting – we never lost contact with each other. We really did try – until we simply ran out of options, because we were removing all of our ancestors down there.

Every time one of our ancestors came out of the ground it was like – whose family member is that – there was silence when a cedar box was taken away.

#### Blanchard Matt

I am on the Makah Tribal Council. I have mixed feelings about the audience response here today. It seems as though we forget that we are a different culture, but yet we are still human beings, and I ask that each and every one of us respect each other's culture. It is important for us to understand one another, where we come from, and who we are is important. These things should be respected along with our elders, where they get their advice, and they are saying enough is enough, because the land is very priceless. The significance of what we have here in Port Angeles is so great. In the future there will be a great museum here on the Olympic Peninsula. Please respect the Lower Elwhas.

#### Secretary MacDonald

We are not walking out on Port Angeles. We will come back to talk again with anybody that wants to talk. There are three chapters to this situation – how, what and why. There is no concealing that there is a lot of uncertainty and unhappiness about where people are now. The long-term issue will remain in Port Angeles. We have asked Tim Thompson, on our nickel, to help mediate.

#### Tim Thompson

I can certainly empathize with a great number of the feelings that the local community has. This decision has caused personal anguish and pain, and it has impacted each and every individual. This decision has had pain and a lot of serious personal impacts to the tribal members as well. If you step back and forget your biases for a moment and realize that the only way to sort this out is to respect each other. We need to build momentum based on an understanding of the facts, even though you may disagree, in a respectful manner. Secretary MacDonald has asked me how to get started with the conversation with the tribe on moving forward. The state and the Commission have an obligation to move forward for all of the people in the state. My role is to start dialogue and deal with the tribe and state issues.

Where should we go from here - the fact is we need to respect and honor the tribe's issues and decisions – we have to respect the community concerns. We have to move on a forward path. Anyone in this room that says this can't be done is wrong. We need to face the problems and grow from them. There is no reason that this community's economic future should be stalled. If we move beyond that those economic opportunities can be created for everyone. I would encourage you to look for opportunities. In the next few days we are going to continue to roll up our sleeves and deal with the very serious issues that we had on site. In the end it is critical for us to agree to disagree. The community must work together in order to prosper.

Vice Chair O'Neal

The Commission has learned something from being here, and we appreciate this opportunity.

The special meeting adjourned at 7:50 p.m. on February 14, 2005.  
**WASHINGTON STATE TRANSPORTATION COMMISSION**

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ROBERT S.DISTLER, Member

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DICK FORD, Member

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A. MICHÈLE MAHER, Member

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DOUGLAS MACDONALD, Ex-Officio Member  
Secretary of Transportation

ATTEST:

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JENNIFER ZIEGLER, Administrator

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DATE OF APPROVAL